

Testimony for HB 583

Mr. Chairman and members of the committee, my name is Neil Harrington and I am representing the Department of Environmental Quality (DEQ), which administers the Opencut Mining Act. This Act regulates mining and related processing operations of sand, gravel, bentonite, clay, scoria, peat, and soil, and reclamation of lands disturbed by these operations.

- The long experience of DEQ's Opencut Mining Program prompted this bill, which should help the regulated opencut mining community, as well as DEQ, better understand and meet their responsibilities under the Act. This bill would amend many sections of the Opencut Mining Act, 82-4-401 et. seq., MCA, for a wide range of purposes, including: (a) reducing the workload and demands of the program, due to the lack of resources in the program to effectively implement all of the current requirements in the Act and pursuant rules, (b) clarifying, solidifying and providing for DEQ's authority in compliance and enforcement of the program, (c) better definition and organization, (c) internal consistency, and (d) clarification, correction, and updating of text and terminology. Prominent changes proposed and the reasons for them are as follows.
- To more effectively deal with the workload, DEQ would allow increased use of the "short form" by raising the 2,500-cubic-yard limit to 5,000 cubic yards for permitted operations not needing another permit or amendment, making other changes to better define this option, and increasing the time from 30 days to 180 days or more for an operator to submit the appropriate documentation of a small operation (see page 8, lines 2-17 of the bill).
- Another prominent change is that the timelines for permit application review and responses by DEQ are proposed to be lengthened to provide more reasonable periods for permit processing. The current initial 15-day response period would be extended to 30 days. Also, the text regarding additional 30-day review time periods is clarified and better defined (page 10, lines 3-16 of the bill). These changes are important, because some of the mining applications are of great interest and concern to the public, which can render the application and environmental review processes very lengthy.
- To potentially reduce the workload, the option of other state agencies to regulate opencut mining operations on lands that they administer or over which they have jurisdiction would be allowed, if they have laws, rules, or ordinances that would provide equivalent regulatory control.
- A number of issues have occurred in the last few years due to lack of definition in the Opencut Mining Act as to what constitutes "opencut mining operations". Clearer definition is proposed to exclude activities whose primary purposes do not include sale or utilization of excavated materials (see page 2, lines 23-24 of the bill). This would reduce time now spent by the program to make determinations as to what does and does not constitute an opencut mining operation.

- New text is proposed as section 17 of the bill (see page 18) to provide DEQ with the authority, standards, and procedures, including administrative review, for permit suspension and revocation on operations that fail to comply with penalty or corrective action orders or that have committed violations that can reasonably be expected to create a danger to offsite public health and safety or significant environmental harm. Currently DEQ has similar authority in statute over hard rock and coal mining operations.
- Another category of amendments would revise, clarify, simplify, correct, and update terms and text throughout the Act. For example, where appropriate, text involving the terms "reclamation permit", "reclamation plan", "reclamation", "opencut mining operations", and similar language would be revised to reflect the fact that mining and processing, as well as reclamation, are part of the opencut regulatory program.
- Other amendments are for the purposes of internal consistency, better definition, more logical organization, rendering certain requirements more realistic or logical. Examples in this category are: (a) changing the description of an amendment to allow for any change in the permit, not merely to add land to the permit area; (b) allowing more time, with good justification, for an operator to provide for a substitute bond, if the original bonding company loses its license; (c) revising and defining more clearly who may request a hearing on a Department decision, and the grounds on which such a request may be made; and (d) replacing the definition of "progress report" with a new section called "Annual Report" that provides for general annual reporting requirements to be defined by administrative rules.
- Duplicative or unnecessary text would be removed. For example, Section 82-4-421 of the Opencut Mining Act is a general statement about the power and function of DEQ; however, this is unnecessary, because Section -422 (see page 5 of the bill) lists the powers, duties, and functions of DEQ. Another example involves procedures for judicial challenges of permit amendments imposed by DEQ; these procedures are currently found in subsections (6) and (7) of Section -436 of the Act, but would be deleted (see page 16, lines 20-29), because this text duplicates that of Section -427 of the Act.